Supreme Court, U. S.
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MICHAEL RODAK, JR., CLER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-1416

PASQUALE TEMPORALE,
Petitioner,
vs.
STATE OF CONNECTICUT,
Respondent.

OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

Table of Authorities 2

Questions Presented 3

Statement of the Case 4

Reasons for Denying Certiorari 4

A. Section 53a-181 of the Connecticut General Statutes Is Neither Vague Nor Overbroad 4

B. The Petitioner's Conviction Did Not Violate the First Amendment 5

TABLE OF AUTHORITIES

Cases	*Page*
Broadrick v. Oklahoma, 413 U.S. 601 (1973)	5
Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)	6
Connally v. General Construction Co., 269 U.S. 385 (1926)	5
Gooding v. Wilson, 405 U.S. 518 (1972)	5
Hess v. Indiana, 414 U.S. 105 (1973)	5, 6
Lewis v. City of New Orleans, 415 U.S. 130 (1974)	5, 6
Moriarty v. Lippe, 162 Conn. 371 (1972)	5
Schenck v. United States, 249 U.S. 48 (1919)	6
State v. Anonymous (1976-9), 363 A.2d 772	5
State v. Anonymous (1972-4), 298 A.2d 52	5
Wright v. Georgia, 373 U.S. 284 (1963)	5

Statutes

Connecticut General Statutes, §53a-181 4

I. *Questions Presented*

A. Is Connecticut's breach of the peace statute, §53a-181 of the Connecticut General Statutes, unconstitutionally vague or overbroad?

B. Are the First and Fourteenth Amendments violated by a conviction for shouting in a lobby of a theater holding a "rock concert," which was crowded at the time, that 'no _____ narcs are coming in this place," shoving a police officer and using loud and abusive language?

II. *Statement of the Case*

The conduct underlying the petitioner's conviction is stated in the opinion of the Appellate Session of the Superior Court, which the petitioner has printed in his appendix, and need not be repeated at length here. Although the petitioner in his petition for certiorari characterizes his conduct as being solely verbal, the appellate court stated that the jury could have found that the petitioner refused access to a police officer who was investigating the possession of marijuana at a rock concert. There were three thousand people in the theater and in the lobby, where the incident occurred, there were several hundred. (A. 4-5, 9, 10). The petitioner shoved the officer and used loud and abusive language. Even following his arrest, he "screamed, cursed (and threw) punches . . ." (A. 5). The officers, at the time of the arrest, were concerned about the possibility of a "touchy" situation developing. (A. 5).

As noted by the petitioner, the Appellate Session of the Superior Court upheld his conviction[1] and the Supreme Court of Connecticut denied a petition for certification.

III. *Reasons for Denying Certiorari*

A. *Section 53a-181 is Not Unconstitutionally Vague or Overbroad.*

The petitioner claims that §53a-181 of the Connecticut General Statutes, which is printed in his petition, is unconstitutionally vague and overbroad. The state notes parenthetically that Connecticut's breach of the peace statute was taken from the Model Penal Code; none of the cases cited by the defendant deal with the precise language found in the Connecticut.

The defendant's vagueness claim appears not to be that men of common understanding cannot understand what is prohibited;

[1] The petitioner and his brother were also convicted of the crime of interfering with a police officer in violation of §53a-167a of the General Statutes of Connecticut, but those convictions were reversed.

see *Connally v. General Construction Company*, 269 U.S. 385, 391 (1926); *Broadrick v. Oklahoma*, 413 U.S. 601, 607-608 (1973); but rather that it provides inadequate warning of the boundary between constitutionally permissible and impermissible applications of the statute. See *Wright v. Georgia*, 373 U.S. 284, 292 (1963). As such, the vagueness claim seems to overlap the overbreadth claim, which presumably is that the statute purports to proscribe language which is protected as well as that which is not. See *Gooding v. Wilson*, 405 U.S. 518 (1972).

There is no indication that the statute in question proscribes speech or conduct which is constitutionally protected. Presumably, the only conceivable situation would be ". . . with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, (a person) . . . (5) in a public place, uses abusive or obscene language or makes an obscene gesture. . . ." Recognizing the inherent problems of language; *Broadrick v. Oklahoma*, supra, 608; it can hardly be said that the above language can be used to punish mere speech. Cf. *Hess v. Indiana*, 414 U.S. 105 (1973).

Even if the statute could be construed as, in some instances, prohibiting mere speech, facial invalidity should be avoided if at all possible. *Broadrick v. Oklahoma*, supra, 612-15. If such a statute has been authoritatively construed to apply only to words which by their "very utterance inflict injury or tend to incite an immediate breach of the peace;" *Lewis v. City of New Orleans*, 415 U.S. 130 (1974); the statute avoids facial overbreadth. *Gooding v. Wilson*, supra, 520. The Connecticut courts have clearly so limited the application. See, e.g., *Moriarty v. Lippe*, 162 Conn. 371 (1972); *State v. Anonymous* (1976-9), 363 A.2d 772 (Cm. Pl. 1976); *State v. Anonymous* (1972-4), 298 A.2d 52 (Cir. Ct. 1972).

B. *The Conviction Did Not Violate the Petitioner's Constitutional Rights.*

The petitioner's second related claim is, essentially, that the statute as applied to him is unconstitutional. In support of this

position, he cites a number of cases in which mere vulgarity has been deemed to be constitutionally protected. This claim partly revolves upon a factual determination. The petitioner overlooks the circumstances in which the words were uttered: as noted above, the possibility of tumult was imminent and the language was accompanied by boisterous conduct and shouting.

As such, the language and conduct clearly do not deserve the protection of the First Amendment. *Chaplinsky v. New Hampshire,* 315 U.S. 568, 571-73 (1942); *Schenck v. United States,* 249 U.S. 48, 52 (1919); see *Hess v. Indiana,* supra; *Lewis v. City of New Orleans,* supra. The sort of behavior exhibited by this petitioner is precisely that to which breach of peace statutes are legitimately addressed.

The State of Connecticut respectfully requests that the petition be denied.

THE STATE OF CONNECTICUT

BY: _____
ROBERT E. BEACH, JR.

Certification

I hereby certify that on April 21, 1978, three copies of the foregoing were mailed to John R. Williams, Esq., 265 Church Street, New Haven, Connecticut 06510.

_____
ROBERT E. BEACH, JR.